

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 20 November 2002

Division: Growth Management

Bulk Item: Yes X No

Department: Marine Resources

AGENDA ITEM WORDING:

Approval of a grant agreement between Monroe County and the South Florida Water Management District (SFWMD) for stormwater and xeriscape improvements along the Overseas Heritage Trail on Big Coppitt. Approval to advertise a Request for Statements of Qualification to complete the project.

ITEM BACKGROUND:

Funds have been made available through the SFWMD to make stormwater and landscaping improvements in areas like the Overseas Heritage Trail. Twenty thousand dollars (\$20,000) are currently available, another \$50,000 will be available to Monroe County at the start of the new fiscal year. The County's match will be \$20,000 or 50%. These funds will be provided through the Division's 148 fund stabilization account. The initial \$20,000 grant will be utilized to complete preliminary engineering and to obtain all necessary permits. The later grant amount (\$50,000) will be amended into the current grant and will provided for project construction.

PREVIOUS RELEVANT BOCC ACTION: August 2002 – Approval to submit grant proposal

CONTRACT/AGREEMENT CHANGES: NA

STAFF RECOMMENDATIONS: Approval

TOTAL COST: \$40,000

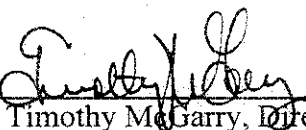
BUDGETED: Yes X No

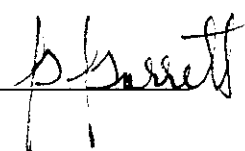
COST TO COUNTY: \$20,000 (Fund 148 or 148 Stabilization)

REVENUE PRODUCING: Yes No X AMOUNT Per Month Year

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


Timothy McGarry, Director of Growth Management



DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM NO.: m/4

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: SFWMD Contract # C-13177
 Effective Date: ASAP
 Expiration Date: 12/1/04

Contract Purpose/Description:
Heritage Trail Stormwater Project - Big Coppitt Key

Contract Manager: George Garrett 2507 Marine Resources/Stop No. 11
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 11/20/02 Agenda Deadline: 10/28/02

CONTRACT COSTS

Total Dollar Value of Contract: \$ 40,000 Current Year Portion: \$ 20,000
 Budgeted? Yes ☒ No ☐ Account Codes: None-
 Grant: \$ 20,000 Please-Create-
 County Match: \$ 20,000

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ NA/yr For: NA
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>10/17/02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>10-2-02</u>
Risk Management	<u>10-3-02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Silva</u>	<u>10-3-02</u>
O.M.B./Purchasing	<u>10/3/02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>10/3/02</u>
County Attorney	<u>10/2/02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>10-2-02</u>

Comments: _____



ORIGINAL

SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: MONROE COUNTY, FLORIDA Address: 2798 Overseas Highway Marathon, FL 33050 Project Manager: George Garrett Telephone No: (305) 289-2507 Fax No: (305) 289-2536 Hereinafter referred to as: COUNTY		This number must appear on all Invoices and Correspondence C-13177 M/WBE Goal: 0% COST SHARING INFORMATION Total Project Cost: \$ 40,000.00 COUNTY Contribution: \$ 20,000.00
PROJECT TITLE: HERITAGE TRAIL CONSTRUCTION - KEYS		
The following Exhibits are attached hereto and made a part of this AGREEMENT: Exhibit "A" - Not Applicable Exhibit "B" - General Terms and Conditions Exhibit "C" - Statement of Work Exhibit "D" - Payment and Deliverable Schedule Exhibit "E" - Not Applicable Exhibit "F" - Not Applicable Exhibit "G" - Not Applicable Exhibit "H" - Not Applicable Exhibit "I" - Not Applicable Exhibit "J" - Not Applicable Exhibit "K" - Not Applicable Exhibit "L" - Not Applicable Exhibit "M" - Not Applicable		
TOTAL DISTRICT CONSIDERATION: \$20,000.00 Multi-Year Funding (If Applicable) Fiscal Year: Fiscal Year: Fiscal Year: *Subject to District Governing Board Annual Budget Approval	AGREEMENT TYPE: Not-to-Exceed Fiscal Year: Fiscal Year: Fiscal Year:	
AGREEMENT TERM: 2 Years District Project Manager: Rhonda haag Telephone No: (305) 853-3219 Fax No. (305) 853-3221	EFFECTIVE DATE: Last Date of Execution by the Parties District Contract Administrator: Patrick Ryan (561) 682-6757 Fax No.: (561) 682-6397 or (561) 681-6275	
SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT: South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <u>Attention:</u> Procurement Division	SUBMIT NOTICES TO THE COUNTY AT: MONROE COUNTY, FLORIDA 2798 Overseas Highway Marathon, FL 33050 <u>Attention:</u> George Garrett	
IN WITNESS WHEREOF, the authorized representative hereby executes this AGREEMENT on this date, and accepts all Terms and Conditions under which it is issued.		
MONROE COUNTY, FLORIDA Accepted By: _____ Signature of Authorized Representative Title: _____ Date: _____	SOUTH FLORIDA WATER MANAGEMENT DISTRICT Accepted By: _____ Frank Hayden, Procurement Director Date: _____ SFWMD PROCUREMENT APPROVED By: <u>Patrick M. Ryan</u> Date: <u>9/9/02</u>	

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY Robert N. Wolfe
ROBERT N. WOLFE
DATE 10-2-02



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 1 - STATEMENT OF WORK

1.1 The **COUNTY** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this **AGREEMENT**.

1.2 As part of the services to be provided by the **COUNTY** under this **AGREEMENT**, the **COUNTY** shall substantiate, in whatever forum reasonably requested by the **DISTRICT**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **COUNTY** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **AGREEMENT**. This paragraph shall survive the expiration or termination of this **AGREEMENT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **AGREEMENT**.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required by the **DISTRICT** pursuant to this **AGREEMENT** shall not exceed the amount as indicated on Page 1 of this **AGREEMENT**. Such amount includes all expenses which the **COUNTY** may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, the amount expended under this **AGREEMENT** shall be paid in accordance with, and subject to the multi-year funding allocations for each **DISTRICT** fiscal year indicated on Page 1 of this **AGREEMENT**. Funding for each applicable fiscal year of this **AGREEMENT** is subject to **DISTRICT** Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in

this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **COUNTY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

2.3 The **COUNTY** assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the **DISTRICT** does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.4 The **COUNTY** by executing this **AGREEMENT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **COUNTY** agrees that the **DISTRICT** may adjust the consideration for this **AGREEMENT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND PAYMENT

3.1 The **COUNTY**'s invoices shall reference the **DISTRICT**'s Contract Number and shall be sent to the **DISTRICT**'s address specified on Page 1 of this **AGREEMENT**. The **COUNTY** shall not submit invoices to any other address at the **DISTRICT**.

3.2 The **COUNTY** shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this **AGREEMENT**. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports, receipts and subcontractor invoices.



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3.3 The **DISTRICT** shall pay the full amount of the invoice within thirty (30) days following **DISTRICT** acceptance of services and/or deliverable(s) required by this **AGREEMENT**. However, failure by the **COUNTY** to follow the foregoing instructions and submit acceptable services and or deliverables(s) may result in an unavoidable delay of payment by the **DISTRICT**.

3.4 Unless otherwise stated herein, the **DISTRICT** shall not pay for any obligation or expenditure made by the **COUNTY** prior to the commencement date of this **AGREEMENT**.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this **AGREEMENT**, other than invoices and notices, to the attention of the respective Project Managers specified on Page 1 of the **AGREEMENT** for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **AGREEMENT**. The **COUNTY** shall direct all administrative matters, including invoices and notices, to the attention of the **DISTRICT's** Contract Administrator specified on Page 1 of the **AGREEMENT**.

All formal notices between the parties under this **AGREEMENT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on Page 1 of the **AGREEMENT**. The **COUNTY** shall also provide a copy of all notices to the **DISTRICT's** Project Manager. All notices required by this **AGREEMENT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT's** Contract Number specified on Page 1 of the **AGREEMENT**.

ARTICLE 5 - INSURANCE

5.1 The **COUNTY** assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the **COUNTY** and the officers, employees, servants, and agents thereof. The **COUNTY** warrants and represents that it is self-funded for Worker's compensation and liability insurance, covering at a minimum bodily injury, personal injury and property damage with protection being applicable to the **COUNTY's** officers, employees, servants and agents while acting within the scope of their employment during performance under this **AGREEMENT**. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

5.2 In the event the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** for work under this **AGREEMENT** shall include a provision whereby the **COUNTY's** subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.

ARTICLE 6 - TERMINATION/REMEDIES

6.1 If either party fails to fulfill its obligations under this **AGREEMENT** in a timely and proper manner, the other party shall have the right to terminate this **AGREEMENT** by giving written notice of any deficiency. The party in default shall then have ten (10) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting party shall have the option to terminate this **AGREEMENT**.



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at the expiration of the ten (10) day time period. Should the **DISTRICT** elect to terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs, in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **COUNTY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such termination shall be effected by delivery to the **COUNTY** of a Notice of Termination specifying the extent to which performance of work under the **AGREEMENT** is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, the **DISTRICT** shall compensate the **COUNTY** for all authorized and accepted deliverables completed through the date of termination in accordance with Exhibit "C", Statement of Work. The **DISTRICT** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this **AGREEMENT**. The **DISTRICT** may withhold all payments to the **COUNTY** for such work until such time as the **DISTRICT** determines the exact amount due to the **COUNTY**.

6.3 If either party initiates legal action, including appeals, to enforce this **AGREEMENT**, the prevailing party shall be entitled to recover a reasonable attorney's fee, based upon the fair market value of the services provided.

6.4 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.5 The **DISTRICT** may order that all or part of the work stop if circumstances dictate that this action is in the **DISTRICT's** best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the **DISTRICT's** Governing Board, a condition of immediate danger to **DISTRICT** employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the **COUNTY** to the **DISTRICT**. If this provision is invoked, the **DISTRICT** shall notify the **COUNTY** in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The **COUNTY** shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the **DISTRICT** is received. Upon resumption of work, if deemed appropriate by the **DISTRICT**, the **DISTRICT** shall initiate an amendment to this **AGREEMENT** to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.6 The **DISTRICT** anticipates a total project cost as indicated on Page 1, with the balance of matching funds and/or in-kind services to be obtained from the **COUNTY** in the amount as specified on Page 1 of this **AGREEMENT**. In the event such **COUNTY** matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the **DISTRICT** to terminate the **AGREEMENT** pursuant to Paragraph 6.2 above.

ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall



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be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five years from the date of final payment under this **AGREEMENT** and upon reasonable notice, time and place.

C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

7.2 The **DISTRICT** shall retain exclusive title, copyright and other proprietary rights in all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the **COUNTY**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "C", Statement of Work (the "Work"). In consideration for the **DISTRICT** entering into this **AGREEMENT**, and other good and valuable consideration the sufficiency and receipt in full of which is hereby acknowledged by the **COUNTY**, the **COUNTY** hereby assigns, transfers, sells and otherwise grants to the **DISTRICT** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto, however the **COUNTY** agrees to execute and deliver to the **DISTRICT** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by the **DISTRICT**. The **COUNTY** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This

paragraph shall survive the termination or expiration of this **AGREEMENT**.

7.3 The **COUNTY** represents and warrants that proprietary software, if any, to be provided to the **DISTRICT** by the **COUNTY** hereunder, as specifically identified in Exhibit "C", Statement of Work shall have been developed solely by or for the **COUNTY**, or lawfully acquired under license from a third party, including the right to sublicense such software. The **COUNTY** shall include copyright or proprietary legends in the software and on the label of the medium used to transmit the software. The **COUNTY** shall grant to the **DISTRICT** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. The **DISTRICT** acknowledges that title to the software identified in Exhibit "C" shall remain with the Licensor.

7.4 Any equipment purchased by the **COUNTY** with **DISTRICT** funding under this **CONTRACT** shall be returned and title transferred from the **COUNTY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$500.00 and with a normal expected life of one (1) year or more. The **COUNTY** will maintain any such equipment in good working condition while in its possession and will return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **COUNTY** will use its best efforts to safeguard the equipment throughout the period of performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **COUNTY** liable for loss or damage due to causes beyond the **COUNTY**'s reasonable control. In the event of loss or damage, the **COUNTY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **COUNTY** access to certain third



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party owned software on **DISTRICT** computer systems. The **COUNTY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.

8.2 The **COUNTY** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **AGREEMENT**. The **COUNTY** shall take all measures necessary to effectuate these assurances.

8.3 The laws of the State of Florida shall govern all aspects of this **AGREEMENT**. In the event it is necessary for either party to initiate legal action regarding this **AGREEMENT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

8.4 The **COUNTY**, by its execution of this **AGREEMENT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or, if the **COUNTY** or any affiliate of the **COUNTY** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **COUNTY** further understands and accepts that this **AGREEMENT** shall be either void by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance

with the mandates of Section 287.133, Florida Statutes. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **COUNTY** for any work or materials furnished.

8.5 The **COUNTY** shall be responsible and liable for the payment of all of its FICA/Social Security and other applicable taxes resulting from this **AGREEMENT**.

8.6 The **COUNTY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **COUNTY**, to solicit or secure this **AGREEMENT**. Further the **COUNTY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **COUNTY**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.7 The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license **AGREEMENT** which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c), Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **COUNTY** (Licensee) hereunder, the **DISTRICT** shall advise the **COUNTY** (Licensee) of such request and, as between the **DISTRICT** and the **COUNTY**



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(Licensee), it shall be the **COUNTY's** (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

8.8 The **COUNTY** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **AGREEMENT**. A delay in obtaining permits shall not give rise to a claim by the **COUNTY** for additional compensation. If the **COUNTY** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **AGREEMENT**, each party to bear its own costs, notwithstanding other provisions of this **AGREEMENT** to the contrary.

8.9 Pursuant to Section 216.347, F.S., the **COUNTY** is prohibited from the expenditure of any funds under this **AGREEMENT** to lobby the Legislature, the judicial branch, or another state agency.

8.10 The **DISTRICT** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **AGREEMENT** involves a project consistent with these goals and objectives. Consequently, the **DISTRICT** is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its **COUNTY**. Therefore, as the **DISTRICT'S COUNTY** for this project, the **COUNTY** assures the **DISTRICT** that the **COUNTY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **COUNTY** agrees to take all reasonable measures necessary to effectuate these assurances. In the event the **COUNTY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 The **COUNTY** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **AGREEMENT**. Both parties are free to enter into contracts with other parties for similar services.

9.2 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **COUNTY** and the **DISTRICT**. No person or entity other than the **COUNTY** or the **DISTRICT** shall have any rights or privileges under this **AGREEMENT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.3 The **COUNTY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.4 The **COUNTY** shall not pledge the **DISTRICT's** credit or make the **DISTRICT** a guarantor of payment or surety for any **AGREEMENT**, debt, obligation, judgement, lien, or any form of indebtedness.

9.5 The **DISTRICT** assumes no duty with regard to the supervision of the **COUNTY** and the **COUNTY** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of **AGREEMENT** performance.

ARTICLE 10 - MBE PARTICIPATION

10.1 The **COUNTY** hereby acknowledges that no Minority Business Enterprises (MBE) participation goal has been established for this **AGREEMENT**; however, both parties agree to provide the other advance notice of competitive contracts that may result from this **AGREEMENT** along with timelines



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for public notice and award of such contracts. In the event subsequent competitive contract awards do result in M/WBE participation, such participation shall be reported to the other party. Both the **COUNTY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - YEAR 2000 COMPLIANCE

Article 11 is hereby deleted.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **AGREEMENT** specifies that performance by **COUNTY** is specifically required during the occurrence of any of the events herein mentioned.

12.2 In the event any provisions of this **AGREEMENT** shall conflict, or appear to conflict, the **AGREEMENT**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

12.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No

waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

12.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

12.5 This **AGREEMENT** may be amended only with the written approval of the parties hereto.

12.6 This **AGREEMENT** states the entire understanding and **AGREEMENT** between the parties and supersedes any and all written or oral representations, statements, negotiations, or contracts previously existing between the parties with respect to the subject matter of this **AGREEMENT**. The **COUNTY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

ARTICLE 13 - SAFETY REQUIREMENTS

13.1 The **COUNTY** shall require appropriate personal protective equipment in all operations where there is exposure to hazardous conditions.

13.2 The **COUNTY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

measures. A Material Safety Data Sheet (MSDS) shall be provided by the **COUNTY** to the **DISTRICT** on each chemical product used.

13.3 The **COUNTY** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or **DISTRICT** safety and health standards.

13.4 It is the **COUNTY's** sole duty to provide safe and healthful working conditions to its employees and those of the **DISTRICT** on and about the site of **AGREEMENT** performance.

13.5 The **COUNTY** shall initiate and maintain an accident prevention program which shall include, but shall not be limited to, establishing and supervising programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

13.6 The **COUNTY** shall erect and maintain, as required by existing conditions and performance of the **AGREEMENT**, reasonable safeguards for safety and protection, including posting of danger signs and other warnings, against hazards.

13.7 The **COUNTY** shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

13.7.1 employees on the work and other persons who may be affected thereby; including pedestrians, visitors, or traveling public;

13.7.2 the work, materials, and equipment to be incorporated therein; whether in storage on or off the site, under care, custody or control of the **COUNTY**, or the **COUNTY's** subcontractors; and

13.7.3 other properties at the site or adjacent thereto; such as trees, shrubs, lawns, walks, utilities, pavement, roadways, structures, building, vehicles, and equipment not designated for removal, relocation or replacement in the course of work.

13.8 The **COUNTY** shall provide first aid services and medical care to its employees.

13.9 The **COUNTY** shall develop and maintain an effective fire protection and prevention procedures and good housekeeping practices on the work site throughout the **AGREEMENT**.

13.10 *Emergencies:* In emergency affecting safety of persons or property on or about the site or as a result of the work; the **COUNTY** shall act, timely and with due diligence, to prevent threatened damage, injury, or loss.

13.11 *Environmental:* When the **COUNTY**, **COUNTY's** subcontractors, or subcontractors, use petroleum products, hazardous chemicals, or any other chemicals used on or about the site, the **COUNTY** shall be responsible for handling these chemical constituents in accordance with federal, state and local regulations during the terms of the **AGREEMENT**. For accidental discharges or releases onto the floor, air, ground, surface waters, ground waters, it shall be the **COUNTY's** sole responsibility to respond immediately to clean the site, at his expense, to the complete satisfaction of federal, state, local regulatory agencies and to the **DISTRICT** requirements.

13.12 The **DISTRICT** may order the **COUNTY** to halt operations under the **AGREEMENT**, at the **COUNTY's** expense, if a condition of immediate danger to the public and/or **DISTRICT** employees, equipment, or property exist. This provision shall not shift the responsibility or risk of loss for injuries or damage sustained from the **COUNTY** to the **DISTRICT**; and the **COUNTY** shall remain solely responsible for compliance with all federal, state and local safety requirements, provisions of this section, and safety of all persons and property on or about the site.

EXHIBIT "C"

STATEMENT OF WORK

Big Coppitt Stormwater and Xeriscape Improvement Project as a part of the Florida Keys Overseas Heritage Trail

1. INTRODUCTION

Monroe County, Florida (County) completed its Storm Water Management Master Plan in the early summer of 2001 (Master Plan). The County Master Plan was created in coordination with the South Florida Water Management District (District), the Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation, and other agencies. These agencies provided valuable information to the County engineering consultant and attended Village community workshops during the master plan creation.

Many of the recommendations in the Master Plan include making limited improvements to stormwater management components along the Overseas Highway (U.S. Highway 1) and along County road rights-of-way. Implicit in the recommendations of the Master Plan is recognition that a number of significant opportunities exist to make these improvements in partnership with the on-going efforts of the Overseas Heritage Trail, a bicycle and pedestrian path which will ultimately connect all of the islands of the Florida Keys.

2. PROJECT LOCATION

The project area is located on Big Coppitt Key in the lower keys of Monroe County, along a portion of the U.S.1 right-of-way on the north side of the highway. The total length of the highway on Big Coppitt Key is approximately 2 miles. The project area includes approximately one mile of this length. An existing bicycle and pedestrian path is located in the area, but needs improvements. See Figures 1 through 3, attached hereto and made a part of this Exhibit "C", Statement of Work.

3. SCOPE OF WORK

The County shall complete design work and permitting work to make three (3) types of improvements to an existing bicycle and pedestrian path on Big Coppitt. The three (3) physical improvements for this project are as follows:

First, the Overseas Highway is immediately adjacent to the path in question. Significant bicycle/pedestrian conflicts exist as vehicles turn from the highway across the path and enter adjacent private properties. Improvements would be designed such that these conflicts are minimized.

Second, the bicycle and pedestrian path is poorly drained. Stormwater improvements will be designed and permitted which will improve the situation. This is an area where rains frequently flood the location.

Third, vegetation has been planted along the path, but has been poorly maintained. This is largely because vehicles frequently cross the path along virtually its entire length and, over time have destroyed it. Stormwater improvements and improvements designed to change traffic flow across the path will serve to protect xeriscape vegetation placed along the path as part of the project.

4. WORK BREAKDOWN STRUCTURE

Design Services: The County shall complete surveys, design and construction drawings, and write construction specifications for this bike path and stormwater improvement project. The County improvements shall follow the criterion established in the Master Plan, which includes the ability to control flooding and improve water quality with structural and non-structural improvements.

The County shall complete the following project tasks:

Task 1: Prepare project design. Submit construction plans to District permitting office.

Task 2: Obtain all necessary permits.

5. COUNTY PROJECT CONTRIBUTIONS

Funds are anticipated from the District and other grant sources to perform construction activities to make physical improvements to the project area. The County will secure funding in the amount of \$20,000.00 from other grant sources in the form of funds and in-kind services.

6. CONSTRUCTION PHASE

It is the parties intention to identify funding for the construction phase during the first quarter of the 2003 Fiscal Year based on 50/50 cost sharing. If authorized, detailed tasking and deliverables for the construction phase together with applicable funding will be delineated in a duly executed amendment to this Agreement by the parties subject to District Governing Board and County Commission approval. No work is authorized for construction until such time as an amendment is executed by the parties.

Figure 1
Big Coppitt Area Map

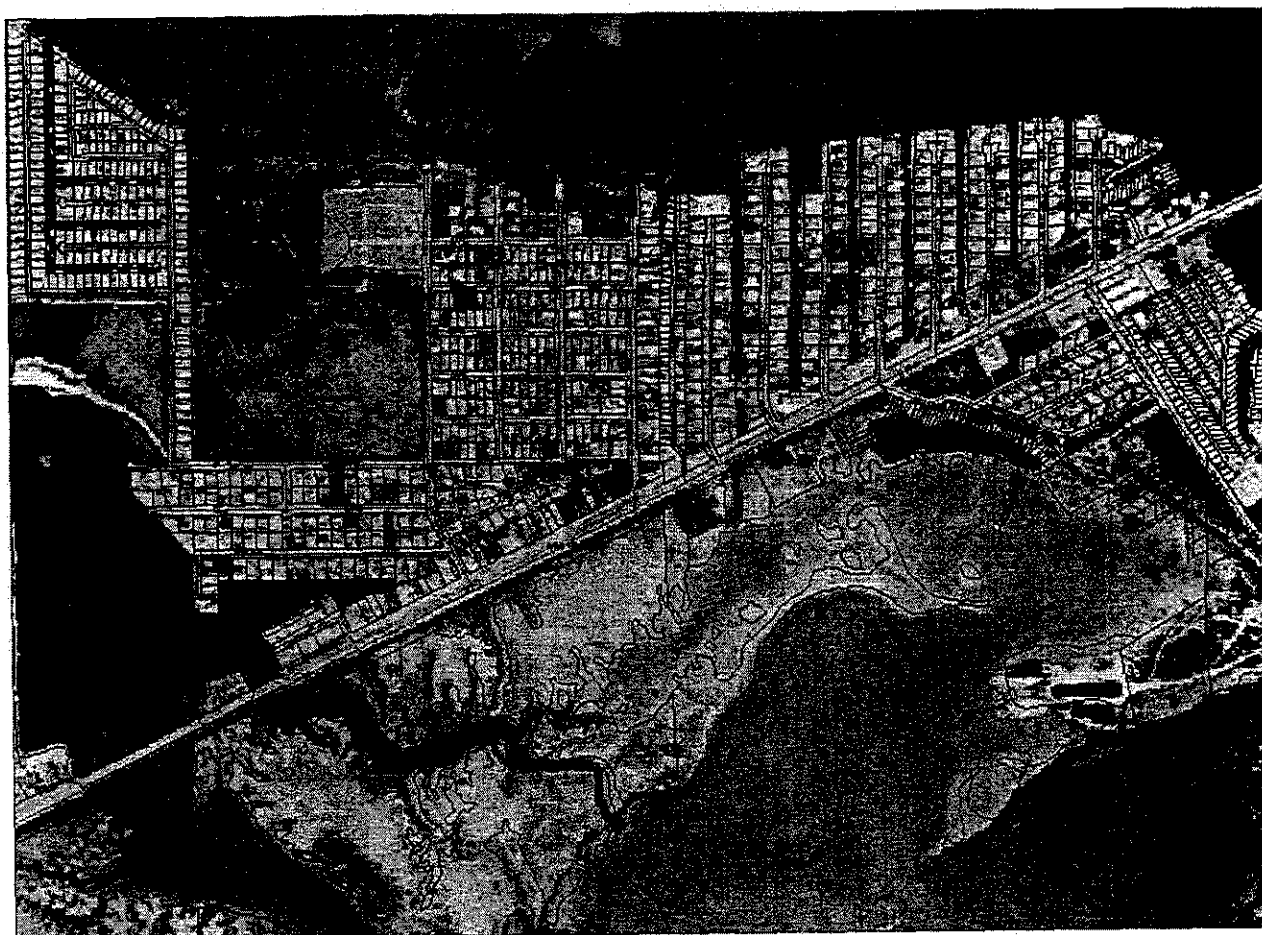


Figure 2
Big Coppitt Project Area

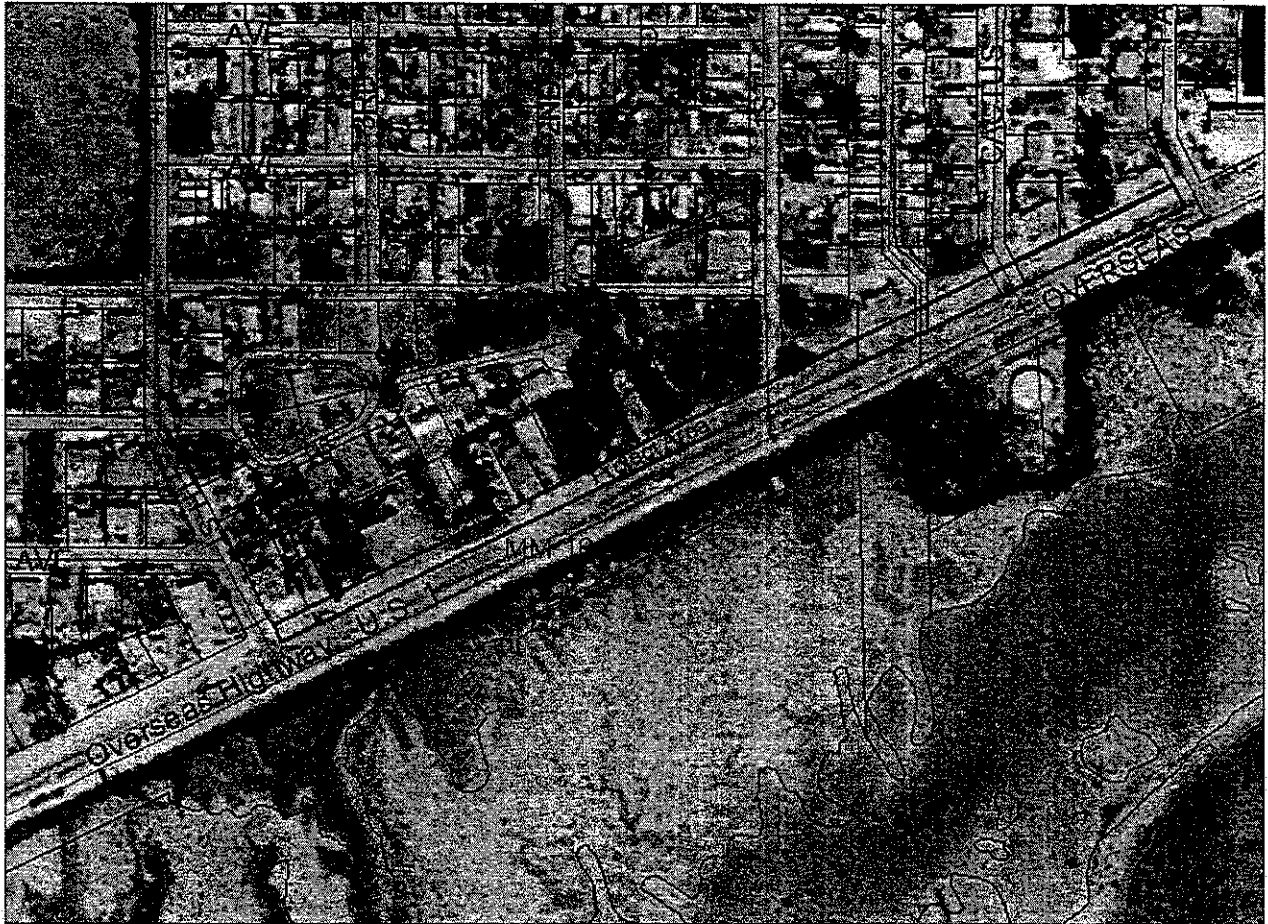


EXHIBIT "D"

PAYMENT AND DELIVERABLE SCHEDULE

The County shall submit the following deliverables as part of this project:

Payment and Deliverables

Deliverable	Due Date	Not-to-Exceed Payment Amount
Task1: Prepare project design. Submit construction plans to the District permitting office. Deliverable: Design drawings.	February 28, 2003	\$10,000.00
Task 2: Obtain all necessary permits. Deliverable: Copy of permits.	May 31, 2003	\$10,000.00
Total Not-to-Exceed Amount		\$20,000.00

The County shall invoice the District in accordance with this Payment and Deliverable Schedule. At the end of the project, the District will require the County to provide certification of the project. Upon receipt and acceptance of deliverables by the District, the District agrees to pay the County for actual costs incurred up to the not-to-exceed amounts specified above. The invoices shall be accompanied by adequate supporting documentation as described in Article 3.2 of the Agreement, including copies of invoices paid by the County.